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DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 12/9/2020

MAURA E. BREEN***

SAMUEL R. BLOOM*****

December 4, 2020

By: ECF

The Honorable Mary Kay Vyskocil

United States District Judge

United States District Court

Southern District of New York

500 Pearl Street, Room 2230

New York, NY 10007

Re: Building Service 32BJ Health Fund, et al.

v.

Emerald Green Building Services, LLC

Docket No. 20-CV-6204 (MKV)(SN)

Dear Judge Vyskocil,

The undersigned is counsel to the plaintiffs, Building Service 32BJ Health Fund, et al. ("Funds") in the above captioned matter. This motion letter is respectfully submitted to allow the Funds permission to withdraw the pending motion for default (Docket Entry No. 19), and to allow defendant, Emerald Green Building Services, LLC ("Emerald Green") an extension in the time to file its answer in this matter.

The action arises under ERISA, and asserts, essentially that Emerald Green has not paid fringe benefits contributions pursuant to a collective bargaining agreement. The Complaint was filed on August 7, 2020 and Emerald Green was served on August 24, 2020. (Docket Entry No.6) Emerald Green's answer was due September 14, 2020. The Funds moved for a default on October 5, 2020. (Docket Entry No. 10) Your Honor denied the motion without prejudice, advising the Funds of certain concerns the Court had with the motion. (Docket Entry No. 16) A second motion was docketed on November 27, 2020. (Docket Entry No. 19) On December 3, 2020, counsel for Emerald Green filed a Notice of Appearance in this matter. (Docket Entry No. 23)

The Funds are cognizant that it is preferable for cases to be determined on the merits, rather than by default. (See, e.g., Iantosca v Elie Tahari Ltd., 2020 US Dist LEXIS 88339 [SDNY May 19, 2020, No. 1:19-cv-4527-MKV]). As such, as per the attached stipulation and proposed order, the parties have stipulated to have the default motion withdrawn as moot, and to allow Emerald Green an extension of its time to answer until December 31, 2020.

The parties respectfully ask that the Court so order the stipulation, so as to permit the matter to proceed on the merits.

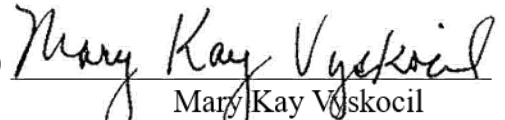
Respectfully submitted,

s/ Ira A. Sturm

cc: : Leah S. Rizkallah (By: ECF)

These requests are GRANTED. Plaintiffs' motion for default judgment [ECF #19] is DENIED as moot. Defendant shall answer the complaint by December 31, 2020.

Date: December 9, 2020
New York, New York


Mary Kay Vyskocil
United States District Judge